IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7339 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTI NIKETAN EDUCATION TRUST & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 – 2.
MS ML SHAH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/10/2006

ORAL JUDGMENT

1. The petitioners have challenged the action of the respondents in seeking to recover from the petitioners a sum of Rs. 6,17,455/- with

interest.

2. The petitioner no.1-trust was permitted to take over the management of one Atma Chetna High School, earlier managed by Navnirman Kelavni Mandal. Since the erstwhile trust was unable to run the school, instead of closing down the school, the Government permitted the petitioner no.1 herein to take over the management of the school. At the relevant time, such permission was granted subject to certain conditions. These conditions are appearing in communication dated 16-7-1998 produced at Annexure-A to the petition made by Gujarat Secondary Education Board to the petitioner no.1-trust. One of the conditions mentioned herein was that all employees of the school will be continued. Yet another condition was that the petitioner no.1-trust will be responsible for all liabilities (including financial) of the school.

2.1 It appears that sometime after the petitioners started running the school, the

Government authorities found that a sum of Rs.6,17,455/- was wrongly paid by way of grant to the erstwhile management of the school. Government, therefore, wanted to recover such alleged overpayment from the petitioners. Simultaneously, there was also some dispute about the grant for rent of the premises not being released by the Government in favour of the erstwhile management. Both these issues were considered by this Court in Special Civil Application No.5031/2001 and Special Civil Application No.11468/2002 and by a decision dated 26-11-2002, finding that principles of natural justice were not followed while seeking recovery of the alleged overpayment from the petitioners, learned Single Judge of this Court passed the following order :

"12. Both these petitions are accordingly disposed of in terms of the following directions:-

(i) The DEO, Bharuch shall give an opportunity of hearing both to the Navnirman trust and also to the Shantiniketan trust in respect of the following two issues:-

(a) The claim of Navnirman trust regarding arrears of building rent for the period between 1992 to 1998;

(b) The recovery of Rs.6,17,455/- being salary grant paid to the staff members of Atma Chetna High School, Bharuch between June, 1997 and July, 1998.

(ii) The DEO shall hear the representatives of both the trusts on both the aforesaid issues and in case the DEO comes to the conclusion that the grants for arrears of rent are required to be paid, the same shall be adjusted against the liability, if any, in respect of the salary grant paid to the staff of Atma Chetna High School between June, 1997 and July, 1998.

(iii) In case the DEO is satisfied that nothing is required to be recovered as regards the salary grant for the period between June, 1997 and July, 1998 the DEO shall refund the amount already deducted /adjusted from the grant payable to the Shantiniketan trust and shall consider the claim of Navnirman trust for arrears of rent for the period prior to 16th July, 1998.

(iv) The DEO shall carry out the aforesaid directions within a period of three months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier, from either of the parties."

3. Pursuant to the said order passed by learned Single Judge of this Court, District Education Officer was required to reconsider the issues after giving an opportunity of being heard to the petitioners. District Education Officer passed an order on 17-2-2003. With respect to release of grant for rent, he concluded that no rent was payable for a period between 10-10-1992 to 17-4-1996. However, after 18-4-1996, the grant had become due and payable. With respect to the recovery sought from the petitioners, he observed that since the earlier orders were passed by the Commissioner of Mid Day Meals and Schools, he is not competent to reconsider this

decision. The petitioners should therefore, approach the Government for the same.

4. When the petitioners approached the Government, this issue was disposed of by the Government by an order dated 16-7-1998 observing that considering the decision of this Court dated 26-11-2002 in Special Civil Application Nos. 5031/2001 and 11468/2002, there is no reason to modify the order passed by the District Education Officer on 17-2-2003.

5. It is on account of these orders passed by the District Education Officer and the State Government that the petitioners have approached this Court in the present petition. The petitioners opposed the recovery of said sum of Rs. 6,17,455/- sought to be made by the respondents.

6. Learned advocate Shri Patel for the petitioners submitted that the petitioners had agreed to undertake the liabilities of the erstwhile trust

only and not that of school. He drew my attention to the conditions under which the school management was transferred in favour of the petitioners vide letter dated 16-7-1998 produced at Annexure-A to the petition. He also drew my attention to the undertaking dated 23-3-1998 given by the petitioner to the Government wherein also it is indicated that the petitioners undertake to weigh the liabilities of the school and not that of Navnirman trust. He therefore, submitted that no amount could have been recovered from the petitioners by the Government.

7. On the other hand learned AGP Ms. M.L. Shah opposing the petition submitted that the petitioners had clearly agreed to be responsible for the liabilities of the school and since there was overpayment by the Government to the erstwhile trust for salary payment of the teachers, the petitioners cannot escape the liability to bear the burden of recovery.

8. Having heard learned advocates appearing for the parties, I find that the authorities had committed an error in not deciding the issues on merits. This Court by said judgement dated 26-11-2002 had requested the District Education Officer to decide the questions regarding the payability of rent as also the question of recovery of alleged overpayment from the petitioners. It was specifically provided that District Education Officer shall carry out the directions within a period of three months from the date of receipt of writ of the Court. Unfortunately, District Education Officer found inhibition in taking the decision on merits. With respect to the question of recovery, since in his view earlier decision having been taken by the Commissioner of Mid Day Meals and Schools, he could not alter such a decision.

9. When the petitioner as suggested by District Education Officer approached the Government, Government only recorded that order passed by District Education Officer on 17-2-2003 does not

call for interference since the same is pursuant to order passed by this Court on 26-11-2002.

10. Both the authorities thus avoided taking decision on merits regarding the question of recovery. If for some reason, it was not possible for District Education Officer to take an independent decision on merits regarding this issue, at-least the Government should have examined all aspects of the matter from the material available on record and taken a decision on merit. To my mind, Government committed a legal error in recording that the order passed by the District Education Officer does not call for interference and the same is pursuant to the decision of this Court dated 26-11-2002.

11. In the result, petition is required to be allowed and proceedings are required to be remanded to the Government for fresh consideration and disposal in accordance with law. Though this Court had earlier directed the

District Education Officer to take a decision by judgement dated 26-11-2002, since District Education Officer finds it embarrassing for him to decide the issues, as earlier decision was taken by the Commissioner of Mid Day Meals and Schools, proceedings are remanded to the Government for fresh consideration and disposal on merits in accordance with law.

12. The Government will take into consideration the representation of the petitioners particularly bearing in mind the stand of the petitioners that by virtue of taking over the management of the school, the petitioners had agreed to undertake the liabilities of the school only and not that of the trust. The contention of the petitioners is that the trust may have much wider and extended financial liabilities over and above the liabilities of the school and it was neither the intention nor so conveyed on record to undertake all financial liabilities of the trust.

13.For the above purpose, the impugned order passed by the Government on 16-7-1998 is quashed. Fresh decision as directed here-in-above will be taken expeditiously and preferably within a period of two months from the date of receipt of representation.

14.With these observations and directions, the petition is disposed of. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

(raghu)